

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

CHARLES HUFFSTUTLER,)	
)	
Plaintiff,)	
)	
vs.)	Case No. CIV-12-125-M
)	
JUSTIN JONES, et al.,)	
)	
Defendants.)	

REPORT AND RECOMMENDATION

Plaintiff, a state prisoner appearing *pro se*, has filed a motion for leave to proceed *in forma pauperis* and supporting affidavit, in conformance with 28 U.S.C. § 1915(a), as amended by the Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, 110 Stat. 1321 (1996). Pursuant to an order entered by Chief United States District Judge Vicki Miles-LaGrange, this matter has been referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B). Having reviewed said motion, the undersigned finds that Plaintiff has sufficient funds to prepay the filing fee of \$350. Specifically, the record reflects that Plaintiff has \$1,340.66 in his inmate savings account which is available for the payment of filing fees. Because he does not qualify for authorization to proceed without prepayment of the filing fee, it is recommended that Plaintiff's motion [Doc. No. 2] be denied and that he be ordered to prepay the full \$350 filing fee for this action to proceed. 28 U.S.C. § 1915(a)(1). See Lister v. Department of the Treasury, 408 F.3d 1309, 1312 (10th Cir. 2005) (magistrate judge should have issued a report and recommendation, recommending denial of the motion to proceed *in forma pauperis*.).

It is further recommended that this action be dismissed without prejudice to refiling unless Plaintiff pays the \$350.00 filing fee in full to the Clerk of the Court within twenty (20) days of any order adopting this Report and Recommendation.

Plaintiff is advised of his right to file an objection to this Report and Recommendation with the Clerk of this Court by February 27, 2012, in accordance with 28 U.S.C. § 636 and Federal Rule of Civil Procedure 72. Plaintiff is further advised that failure to timely object to this Report and Recommendation waives the right to appellate review of both factual and legal issues contained herein. Moore v. United States, 950 F. 2d 656 (10th Cir. 1991).

ENTERED this 6th day of February, 2012.


DOYLE W. ARGO
UNITED STATES MAGISTRATE JUDGE